

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JHONATHAN FRYE,

Plaintiff,

v.

PFIEFER, Warden, et al.,

Defendants.

Case No.: 1:21-cv-01525-NODJ-SKO (PC)

**ORDER VACATING FINDINGS AND
RECOMMENDATIONS TO DISMISS
ACTION FOR PLAINTIFF'S FAILURE
TO OBEY COURT ORDERS AND
FAILURE TO PROSECUTE**

(Doc. 13)

**ORDER DIRECTING CLERK OF THE
COURT TO CHANGE PLAINTIFF'S
ADDRESS**

Plaintiff Jhonathan Frye is proceeding pro se and *in forma pauperis* in this civil rights action brought pursuant to 42 U.S.C. § 1983.

I. INTRODUCTION

On October 27, 2023, this Court issued its Second Screening Order. (Doc. 11.) The Court found Plaintiff's first amended complaint stated an Eighth Amendment threat to safety claim against Defendant Rodriguez and First Amendment retaliation claims against Defendants Vasquez and Rodriguez, but failed to state a cognizable claim against any other named defendant. (*Id.* at 3-8.) Plaintiff was directed to elect of one three options within 21 days of the date of service of the order: (1) notify the Court he did not wish to file a second amended complaint and was willing to proceed only on his Eighth Amendment claim of a threat to safety against

1 Defendant Rodriguez, and his First Amendment retaliation claims against Defendants Vasquez
2 and Rodriguez, the remaining claims to be dismissed; *or* (2) file a second amended complaint
3 curing the deficiencies identified in the screening order; *or* (3) file a notice of voluntary dismissal.
4 (*Id.* at 8-9.)

5 On November 28, 2023, when more than 21 days passed without a response from
6 Plaintiff, the Court issued Findings and Recommendations to dismiss this action for Plaintiff's
7 failure to obey court orders and failure to prosecute. (Doc. 13.) Any objections were to be filed
8 within 14 days. (*Id.* at 4.)

9 On December 21, 2023, Plaintiff filed a second amended complaint. (Doc. 15.) On the
10 last page of this filing, Plaintiff advises the Court he has paroled and provides a new address:
11 "448 N. Lynora St., Tulare, CA 93274." (*Id.* at 6.)

12 **II. DISCUSSION**

13 Plaintiff has paroled from California State Prison, Sacramento. Although Plaintiff does
14 not indicate the date when he was paroled, the Court finds it unlikely Plaintiff received the
15 Findings and Recommendations issued November 28, 2023. Therefore, the Court will vacate the
16 Findings and Recommendations to dismiss this action.

17 Although he was directed to file a second amended complaint within 21 days of the
18 October 27, 2023 second screening order, Plaintiff filed his second amended complaint on
19 December 21, 2023. Plaintiff states he received the Court's second screening order on December
20 14, 2023, from the parole office. (Doc. 15 at 6.) The Court will accept the second amended
21 complaint even though it was filed after the imposed deadline. Plaintiff is advised his second
22 amended complaint will be screened, as required by 28 U.S.C. § 1915A(a), in due course.

23 Finally, the Court notes Plaintiff's address has changed following his parole. The Court
24 will direct the Clerk of the Court to change Plaintiff's address to 448 N. Lynora Street in Tulare,
25 California. Plaintiff is advised that any future change of address must be reported on the Notice of
26 Change of Address form previously provided with the First Informational Order In Prisoner/Civil
27 Detainee Civil Rights Case. (See Doc. 2 at 7 [issued 10/15/21].)

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1 **III. CONCLUSION AND ORDER**

2 For the reasons set forth above, **IT IS HEREBY ORDERED** that:

3 1. The Findings and Recommendations to Dismiss Action for Plaintiff's Failure to Obey
4 Court Orders and Failure to Prosecute (Doc. 13) are **VACATED**; and
5 2. The Clerk of the Court is **DIRECTED** to change Plaintiff's address to 448 N. Lynora
6 Street, Tulare, CA 93274.

7 IT IS SO ORDERED.

8 Dated: December 26, 2023

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/s/ Sheila K. Oberto

10 UNITED STATES MAGISTRATE JUDGE

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